

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE:)
)
OPTIMA UNIVERSITY, LLC,) CASE NO. 09-11212
) Chapter 11
DEBTOR.)

**MOTION FOR RELIEF FROM AUTOMATIC STAY
TO ALLOW CONTINUATION OF PROSECUTION
OF PENDING CIVIL ACTION FOR DAMAGES
AND INJUNCTIVE RELIEF**

Come now the National Board of Medical Examiners (“NBME”) and the Federation of State Medical Boards (“the Federation”) collectively (“Movants”), by and through counsel and file this Motion pursuant to 11 U.S.C. § 362(d) for relief from the automatic stay to allow the Movants to continue prosecution of a pending action for damages and injunctive relief against the Debtor. In support of this Motion, the Movants would show unto the Court as follows:

1. NBME is a non-profit organization which provides examinations for the health professions for the purpose of protecting the public interests through state of the art assessment of the knowledge and skills of prospective healthcare providers.
2. The Federation is a non-profit organization representing the seventy state medical boards of the United States and its territories whose purpose is to continue and

improve the quality, safety, and integrity of healthcare through the development and promotion of high standards for physician licensure and practice.

3. The Movants own and sponsor the United State Medical Licensing Examination ("USMLE") which is a standardized examination that is used in evaluating applicants for medical licensure in the United States.

4. The Debtor and its principal owner Eihav Suliman, operate a test preparation program which purports to assist perspective examinees in preparation to take the USMLE examination.

5. The Debtor filed for protection under Chapter 11 of the United States Bankruptcy Code on or about March 23, 2009.

6. At the time the Debtor commenced the above-styled Chapter 11 proceedings, it was a Defendant in a pending action for damages and injunctive relief filed by the Movants in the United States District Court for the Western District of Tennessee styled National Board of Medical Examiners and Federation of State Medical Boards v. Optima University, LLC, Eihab Mohammad Suliman and John Does No. 1 through 10, Civil Action No. 09-1043-JDB ("the District Court Action"). In the District Court Action the Movants, as Plaintiffs, allege continuing infringement with regard to their exclusive rights with respect to the USMLE tests and the questions and answers contained therein, including the exclusive right to reproduce, distribute, display and create derivative works based upon the tests and test questions and answers.

7. Debtor failed to disclose the pendency of the District Court Action in the Statement of Financial Affairs that he filed in this proceeding, despite the fact such information was expressly and unambiguously called for in Paragraph 4 of the Statement.

Other aspects of the Debtor's bankruptcy papers are also incomplete or inaccurate.

8. In the District Court Action, the Movants, as Plaintiffs, seek monetary compensation for actual damages resulting from the infringement of their copyrights by the Debtor and injunctive relief prohibiting the further unlawful use or infringement upon the Movants' rights in the copyrighted USMLE test questions and answers and/or other protected intellectual property interests.

9. In order to adequately protect the confidential, copyrighted examination materials described above, and thereby to protect the integrity of the licensure process for physicians, and in order to liquidate their claim for actual monetary damages resulting from the copyright infringement by the Debtor, the Movants seek relief from the automatic stay in order to allow the continuation of the prosecution of the District Court Action. Relief from the stay is necessary to enable the Movants to adequately protect their property interests in the USMLE questions and the copyrights that are associated with those questions.

10. Absent relief from the automatic stay to allow for the protection and enforcement of their rights and claims which are the subject of the District Court Action, the Movants will be irreparably and irreversibly harmed with regard to the protection of the integrity of their exclusive copyrights with respect to the USMLE tests and questions and answers contained therein and the other intellectual property rights owned by the Movants. In addition, the public welfare could be harmed, because Debtor is unlawfully disclosing confidential test questions to prospective USMLE examinees.

WHEREFORE, the Movants would respectfully request that this Court enter an Order modifying the automatic stay for the purpose of allowing the continuation of the prosecution of the National Board of Medical Examiners and Federation of State Medical

Boards pending action against the Debtor for the purpose of liquidating the claims of the Movants for the Debtors infringements on the Movants' copyrights and to protect and enforce the Debtor's interest in said copyrighted materials through appropriate injunctive relief as deemed necessary by the United States District Court for the Western District of Tennessee.

Respectfully submitted this 16th day of April, 2009.

RAINEY, KIZER, REVIERE & BELL, P.L.C.

By: /s/ Charles C. Exum
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Certificate of Service

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon the following parties by U.S. Mail as follows:

U.S. Trustee,
Debtor,
Steven L. Lefkovitz
Lefkovitz and Lefkovitz
618 Church Street #410
Nashville, TN 37219

This the 16th day of April, 2009.

RAINEY, KIZER, REVIERE & BELL, P.L.C.

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